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WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA, LOUISIANA

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

NATHANIEL THOMAS
VIRGINIA THOMAS

CIVIL ACTION NO. 12-00087

-VS-

JUDGE DRELL

WAL-MART LOUISIANA, LLC., et al.

MAGISTRATE JUDGE KIRK

RULING

Before the Court are two pending motions. The first is titled a "Motion for New Trial and/or Motion to Alter or Amend Judgment, and Alternatively, to Certify the Court's Order Denying Remand for Appellate Review" (Doc. 25) filed by Plaintiffs. The second is Plaintiff's "Motion to Suppress Attempt by Defendant, Katy Powell, to Alter and/or Change Her Deposition Testimony." (Doc. 32).¹ The Motion to Suppress (Doc. 32) will be **GRANTED** for the purposes of our consideration for the Motion for New Trial. The Motion for New Trial (Doc. 25) will be **DENIED**. Further, Defendant Katy Powell will be **DISMISSED WITHOUT PREJUDICE** from this action.

I. Background

For the sake of brevity, we adopt the factual and procedural background of this case set forth in the Magistrate Judge's Report and Recommendation (Doc. 14). Plaintiffs filed the present Motion for New Trial (Doc. 25) in response to our Judgment

¹ This motion also appears in the record as Doc. 6-3 in support of Plaintiffs' Motion to Remand (Doc. 6). We consider it as a separate motion as set forth above.

(Doc. 21) adopting the Report and Recommendation (Doc. 14) and denying Plaintiffs' Motion to Remand and for Attorney's Fees (Doc. 6). The Motion to Suppress (Doc. 32) was originally filed in the state court proceeding and was filed in this Court in accordance with the deadlines in the controlling Plan of Work (Doc. 23).² We have carefully considered the parties' arguments contained in the motions and responses thereto, and we are prepared to rule on the motions.

II. Law and Analysis

A. Motion to Suppress (Doc. 32)

Plaintiffs took the discovery deposition of Katy Powell on October 19, 2011. (Powell Deposition, Doc. 38-1). Ms. Powell submitted a "Transcript Amendment Page" which purports to either completely change or add additional information to twenty-two (22) of her responses. (Doc. 38-2). In their titled "Motion to Suppress," (Doc. 32), Plaintiffs ask the Court to strike Ms. Powell's proposed changes from the record. Our review of Ms. Powell's changes reveals them to be material³ and pertain directly to key issues in the case. We agree with Judge Little's observation in Greenway v. Int'l Paper, 144 F.R.D. 322, 325 (W.D. La. 1992) that a "deposition is not a take home examination" and find the changes submitted exceed the purpose of La. C. C. P. art 1445 and Fed. R. Civ. Proc. 30(e). For the purposes of considering the Motion for New Trial (Doc. 25), the Motion to Suppress (Doc. 32) will be **GRANTED**.

² Plaintiffs also filed a "Motion to Compel Answers to Interrogatories and Production of Documents and for Expenses" (Doc. 31) which had been pending in state court. This motion has been transferred to the Magistrate Judge and its disposition does not affect our decision herein.

³ Of particular concern is Ms. Powell's attempt to change her answer from "Yes" to "No" for four different questions. (Doc. 6-3).

However, even excluding the proposed changes from Ms. Powell's deposition, it is clear that she did not have personal knowledge about the particular hazard which allegedly caused Mr. Thomas' accident. Accordingly, we find no reasonable possibility that Louisiana law would allow Plaintiffs to maintain a cause of action against Ms. Powell and she will be **DISMISSED WITHOUT PREJUDICE** from this case.

B. Motion for New Trial (Doc. 25)

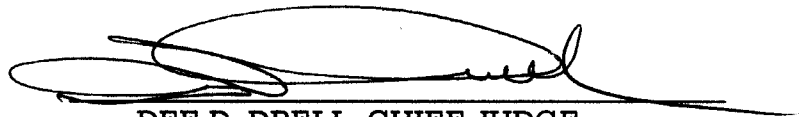
We find no reason to depart from our Judgment (Doc. 21) adopting the Report and Recommendation of the Magistrate Judge (Doc. 14). We maintain the applicability of the exception in Tedford v. Warner-Lambert Co., 327 F. 3d 423 (5th Cir. 2003). We likewise find no reason to certify our decision for interlocutory appeal and note that piecemeal appeals are disfavored. See Clark-Dietz and Associates-Engineers, Inc. v. Basic Const. Co., 702 F.2d 67 (5th Cir. 1983). As it stands, this case is properly before this Court and will proceed in accordance with Civil Case Management Order No. 2 (Doc. 24) and the Plan of Work (Docs. 16 and 22). Plaintiffs' Motion for New Trial (Doc. 25) will be **DENIED**.

III. Conclusion

Plaintiffs' "Motion for New Trial and/or Motion to Alter or Amend Judgment, and Alternatively, to Certify the Court's Order Denying Remand for Appellate Review" (Doc. 25) will be **DENIED**. Plaintiff's "Motion to Suppress Attempt by Defendant, Katy Powell, to Alter and/or Change Her Deposition Testimony." (Doc. 32)

will be **GRANTED**. Defendant Katy Powell will be **DISMISSED WITHOUT PREJUDICE** from this action. Disposition will enter by a separate Judgment signed on this date.

SIGNED on this ^{7th}20 day of March, 2013 at Alexandria, Louisiana.

A handwritten signature in black ink, appearing to read "Dee D. Drell", written over a horizontal line.

DEE D. DRELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT